

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

301 State House
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FISCAL IMPACT STATEMENT

LS 7181

BILL NUMBER: SB 161

DATE PREPARED: Dec 26, 2000

BILL AMENDED:

SUBJECT: Disclosure of Persuasion Polls.

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FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill defines a "persuasion poll" as a telephone survey that: (1) includes more than 500 calls; (2) references a candidate in any election or caucus; and (3) is designed to provide negative information about a candidate or to influence the respondent to vote for or against a candidate. It prohibits a person from sponsoring, authorizing, conducting, or administering a persuasion poll unless the caller identifies at the end of the call the person sponsoring and authorizing the call. The bill also requires that if a candidate's committee neither sponsors nor authorizes a call, the caller must state that the call is not authorized by any candidate or candidate's committee. It makes a violation of these provisions a Class B misdemeanor.

The bill also provides that a candidate, candidate's committee, regular party committee, political action committee, or legislative caucus committee that sponsors a persuasion poll that violates these provisions is subject to a civil penalty of up to three times the amount expended in sponsoring the poll. This bill also provides that a person who authorizes, conducts, or administers a persuasion poll that violates these provisions must pay a civil penalty of \$50 for each offending call, up to a maximum civil penalty of \$1,000 for each poll conducted, plus any investigative costs incurred.

Effective Date: July 1, 2001.

Explanation of State Expenditures: There may be additional investigative expenditures by the Election Commission for the inspection of possible violations under this bill. The civil penalties described in the proposal would include the cost of investigation. As of October 2000, the Election Commission had nine authorized staff members. One position was vacant, a systems analyst. The other eight positions include two attorneys, two field auditors, two unclassified executive positions, a program coordinator, and an administrative assistant. The funds and resources required above could be supplied through a variety of sources, including the following: (1) Existing staff and resources not currently being used to capacity; (2) Existing staff and resources currently being used in another program; (3) Authorized, but vacant, staff

positions, including those positions that would need to be reclassified; (4) Funds that, otherwise, would be reverted; or (5) New appropriations. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend upon legislative and administrative actions.

Explanation of State Revenues: There are several penalties described for violations of this bill. The violations are both civil and criminal. If the Election Commission determines a violation has occurred, a civil penalty of \$50 per each illegal polling call could be assessed. The total civil penalty cannot exceed \$1,000 per poll plus investigative costs. All civil penalties would be deposited in the state Campaign Finance Enforcement Account. In FY 2000 there were \$19,830 in penalties deposited into the Account. The Account is used for the enforcement of campaign laws and creating and operating a campaign finance computer system, including the investment in technology to expand the capabilities of the computer system.

Criminal penalties would include a Class B misdemeanor. The penalty is upgraded to a Class A misdemeanor if the violator had a prior unrelated conviction for attempting to block his/her phone number or identity from appearing in the ID service of the person answering the poll.

If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class A misdemeanor is \$5,000. The maximum fine for a Class B misdemeanor is \$1,000. Criminal fines are deposited in the Common School Fund. If the case is filed in a circuit, superior, or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund.

Explanation of Local Expenditures: Counties may also see increased expenditures due to investigation, depending on the amount of illegal persuasion poll activity.

A Class A misdemeanor is punishable by up to one year in jail. A Class B misdemeanor is punishable by up to 180 days in jail. The average daily cost to incarcerate a prisoner in a county jail is approximately \$44.

Explanation of Local Revenues: The County Election Board, upon determination of a violation, would be able to assess a civil penalty of \$50 per each illegal polling call. The total civil penalty cannot exceed \$1,000 per poll plus investigative costs. The penalties collected would be deposited with the County Treasurer in the county Campaign Finance Enforcement Account.

If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: (1) The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. (2) A \$3 fee would be assessed and, if collected, would be deposited into the county law enforcement continuing education fund. (3) A \$2 jury fee is assessed and, if collected, would be deposited into the county user fee fund to supplement the compensation of jury members.

State Agencies Affected: Indiana Election Commission.

Local Agencies Affected: County Election Board; Trial courts; local law enforcement agencies.

Information Sources: